BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2018-318-E

In the Matter of: Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order	**PETITION OF DUKE ENERGY PROGRESS, LLC FOR REHEARING OR RECONSIDERATION OF ORDER NO. 2019-341**

Pursuant to S.C. Code Ann. §§ 1-23-380, 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825(A)(4) and applicable South Carolina and federal law, Duke Energy Progress, LLC ("DEP" or the "Company") hereby petitions the Public Service Commission of South Carolina ("Commission") to reconsider a portion of its rulings in Order No. 2019-341 (the "Order"). The Order was served on DEP on May 21, 2019. As explained further below, the Commission should reconsider its decision in Order No. 2019-341 because substantial rights of the Company are prejudiced by unlawful, arbitrary and capricious rulings by the Commission on certain issues presented in this proceeding. The specific rulings that are the subject of this petition are set out separately below.

GROUNDS FOR RECONSIDERATION

A. Coal Ash Remediation and Disposal Costs.

The Commission's decision to disallow recovery in rates of the South Carolina portion of $333,480,308 in coal ash remediation and disposal costs ("Coal Ash Costs") prejudices the Company's substantial right to recover its reasonable and prudently incurred expenses of

providing service to the public. The generating units that burned the coal and produced the ash that is now being remediated provided electricity to DEP customers in South Carolina and North Carolina. The costs of building and operating those plants have been shared by the customers of both states on a fair and equitable basis since the plants were brought on line, in most cases decades ago. The Commission's decision in this case that certain of the costs associated with those plants should not now be borne by the South Carolina customers who benefited from the electricity produced by those plants is unsupported by either law or fact. The inequity of the Commission's decision in this case is amplified by the fact that North Carolina customers are paying for these same types of costs for South Carolina sites.

As set forth more fully below, the Commission's decision violates constitutional protections afforded by the South Carolina and United States Constitutions; suffers from multiple errors of law; is founded on multiple factual errors that render the decision clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and is arbitrary and capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the Commission's decision on Coal Ash Costs should be reconsidered, and DEP should be allowed to recover the full amount of those costs.

1. The Commission's Decision Violates Multiple Provisions of the South Carolina and United States Constitutions.

The rates established by the Commission must provide the utility with the opportunity of recovering its reasonable operating expenses, as well as provide a fair and reasonable return on the investments made by the company in providing utility service to its customers. *Southern Bell & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 600 (1978); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n,* 262 U.S. 679 (1923); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 604 (1944). Although the burden of proof in showing the

reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the South Carolina Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 422 S.E.2d 110, 309 S.C. 282 (1992) (internal citations omitted). Other parties are therefore required to produce evidence that overcomes both this presumption and any evidence the utility has proffered that further substantiates its position. *See Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–63 (2011).

In this proceeding, no evidence was presented to the Commission that overcame the presumption of the reasonableness and good faith of the DEP Coal Ash Costs. The basis of the Commission's decision was that certain of the Coal Ash Costs incurred at generating plants in North Carolina were required by provisions of the North Carolina Coal Ash Management Act ("CAMA"), and, for that reason alone, that portion of the Coal Ash Costs should not be recovered from South Carolina customers. No evidence was presented that the Coal Ash Costs were imprudent or unreasonable, and it is undisputed that South Carolina customers benefited from the electricity generated at the plants located in North Carolina from which the purported CAMA costs in question arise. Accordingly, the Commission's denial of these costs violates several constitutional provisions.

First, the Commission's decision amounts to an unconstitutional taking under the United States Constitution and South Carolina Constitution, which both prohibit the government from taking property without just compensation. *See* U.S. Const. art. V; U.S. Const. art. XIV; S.C. Const. art. I, § 13.

Second, because the Commission's decision lacks any cognizable legal basis for denying Coal Ash Costs and is predicated on clearly erroneous factual conclusions, it deprives DEP of

substantive due process under the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution.

Finally, the Commission's denial of DEP's Coal Ash Costs based on the "sovereignty" of the State of South Carolina (Order No. 2019-341, pp. 50-52) violates the Commerce Clause of the United States Constitution, which prevents states from engaging in economic discrimination and burdening the flow of interstate commerce. U.S. Const. art. I, § 8.

2. The Commission's Decision Suffers from Multiple Errors of Law.

As discussed above, no evidence was presented in this proceeding that the Coal Ash Costs at issue were imprudent or unreasonable, and it is undisputed that South Carolina customers benefited for decades from the electricity generated at the plants located in North Carolina from which the purported CAMA costs in question arise. Since South Carolina customers have undisputedly received the low-cost power from these North Carolina plants for decades under the "regulatory compact" that compels DEP to serve them, the Commission's order denying the cost to comply with North Carolina environmental compliance laws violates the doctrine of unjust enrichment. Additionally, in deciding to provide South Carolina customers with low-cost electricity from its North Carolina coal-burning plants, DEP reasonably relied on the representation and ongoing presumption that it would be allowed to recover the reasonable and prudent costs associated with generation of that power and the byproducts thereof, including environmental compliance costs. Since DEP has reasonably relied on this fact to its detriment, the Commission's Order denying these costs violates the doctrine of equitable estoppel.

3. The Commission's Decision Is Clearly Erroneous in View of the Reliable, Probative, and Substantial Evidence on the Whole Record.

In denying Coal Ash Costs in the amount suggested by ORS witness Wittliff, the Commission made the following factual errors:

Error No. 1 (All DEP Sites): ORS witness Wittliff's calculated disallowances are based on an incorrect test year. DEP's request for coal ash expenses covers July 2016 through December 2018. (Order No. 2019-341, p. 45). Kerin's Exhibit 10, when the application was originally filed, included costs dating back to January 1, 2015. This mistake was corrected when DEP filed its errata testimony in January 2019 which included a Revised Kerin Exhibit 10. Witness Wittliff did not account for these revised numbers in his direct or surrebuttal testimony and instead based his proposed disallowances on incorrect numbers.

Error No. 2 (Sutton): For its disallowance at this site, the Commission relied on ORS witness Wittliff's erroneous calculations built on erroneous assumptions that he later disclaimed in his sur-rebuttal testimony and on cross examination.

Error No. 3 (Asheville): For its disallowance at this site, the Commission relied on ORS witness Wittliff's testimony that North Carolina's CAMA rules resulted in additional expenses being incurred at DEP's Asheville Plant, due to an accelerated closure schedule, which the federal Coal Combustion Residuals ("CCR") rule would have otherwise required after he admitted that the closure timeline at Asheville was not affected by CAMA.

Error No. 4 (Sutton): The Commission relied on ORS witness Wittliff's testimony that North Carolina's CAMA rules resulted in additional expenses being incurred at DEP's Sutton Plant, due to an accelerated closure schedule, which the federal CCR rule would have otherwise required after he admitted that a CCR rule timeline would not have reduced costs at that sites.

Error No. 5 (Weatherspoon): The Commission disallowed costs incurred at the Weatherspoon site based on witness Wittliff's claim that Weatherspoon was being treated as a beneficiation site under CAMA after witness Wittliff admitted that he had made a mistake regarding this assertion.

Error No. 6 (Asheville): The Commission disallowed $98,200,932 in costs incurred at the Asheville plant based on witness Wittliff's testimony that the Asheville plant could have been remediated via cap-in-place under the CCR rule after witness Wittliff admitted that he had no support for this claim and that he had not conducted any analysis to rebut testimony to the contrary.

Error No. 7 (H.F. Lee and Cape Fear): The Commission tied its disallowance at H.F. Lee and Cape Fear to CAMA's beneficiation requirements being performed at these sites without regard to undisputed evidence that the beneficiation activities at these sites are saving, not costing, DEP customers millions of dollars in overall closure costs.

Error No. 8 (Cape Fear): The Commission disallowed $33,631,199 which accounted for all coal ash compliance costs incurred to-date at the Cape Fear plant based upon witness Wittliff's incorrect testimony that the CCR Rule and other regulatory requirements do not require any remediation at that site.

Error No. 9 (Multiple Sites): The Commission based its disallowances for the alleged increased costs for these sites on witness Wittliff's calculation using the "weighted average of engineering and planning as a percentage of total project costs," which witness Wittliff admitted was imprecise and not reflective of actual costs.

Error No. 10 (Legal Fees): The Commission tied its disallowance of certain legal fees to the assertion that DEP should be prevented "from charging its customers with any legal costs or expenses flowing from or related to its guilty plea of criminal negligence" without regard to undisputed evidence that no such costs or expenses were included for recovery.

4. The Commission's Order is Arbitrary and Capricious.

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (1985). Where, as here, the Commission makes no findings of fact or conclusions of law, South Carolina courts have found orders to be arbitrary and capricious. As the South Carolina Supreme Court has held, "a recital of a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." *Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n*, 290 S.C. at 411, 351 S.E.2d at 152.

With respect to its decision to disallow certain of the Coal Ash Costs, the Commission did not, in its Order, make any competent findings of fact or conclusions of law to support its decision, nor did it articulate any fixed rules or standards under which the Commission's order can be judged. In the absence of any such findings, a court would be compelled to find that the Commission's Order denying Coal Ash Costs is without a rational basis; is based alone on the Commission's own will; and is not governed by any fixed rules or standards. For all of these reasons, the Order with respect to the Coal Ash Costs is arbitrary and capricious and amounts to reversible error.

B. Treatment of Deferrals.

The Commission's treatment of DEP deferrals violates the Company's right to recovery of the prudently incurred expenses of providing service to its customers. Pursuant to the

principles established in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), DEP has a constitutional right to a reasonable opportunity to recover its prudently incurred costs of providing service. In this proceeding, it was undisputed that the deferred costs were both prudently incurred and used and useful. The Commission's decision to refuse to allow DEP to recover any return on substantial portions of its deferrals, combined with the adoption of excessively long amortization periods for the deferrals, will prevent DEP from recovering its prudently incurred expenses in a manner that is required by the constitution.

Following are the specific deferral rulings by the Commission that are unlawful for the reasons stated in this section.

- GridSouth, Fukushima/CyberSecurity (Adjustment #17). The Order requires the amortization of deferred O&M expenses totaling $8.975 million over five years without allowing any return during amortization periods. These deferred balances were included in rate base in the last rate case, so this is a change from prior practice. In granting a continuation of these deferrals in the 2016 rate case, the Commission recognized that "extension of these deferrals has helped to mitigate rate increases" in past cases. *Order Approving Increase in Rates and Charges and Settlement Agreement,* In Re: Application of Duke Energy Progress, LLC for Authority to Adjust and Increase its Electric Rates and Charges, Docket No. 2016-227-E, Order No. 2016-871 at 28 (December 21, 2016). Further, in approving the Company's request for an accounting order for the Fukushima/CyberSecurity deferrals, the Commission expressly concluded that the deferrals served as a means to prevent earnings degradation. *See* Order No. 2014-138 at

6 ("[c]learly, it is reasonable that degradation of the Company's earnings be prevented; in so much as it is related to a lack of deferral of the regulatory assets and liability cited in the Company's Petition.").

- Environmental Costs (Adjustment #18). The Order requires the amortization of deferred depreciation expenses totaling $227 thousand over five years without allowing any return during the deferral or amortization period.
- Advanced Metering Infrastructure (Adjustment #19). The Order requires the amortization of deferred depreciation expenses totaling $640 thousand over a period of fifteen years without allowing any return during the deferral or amortization period.
- Customer Connect (Adjustment #30). The Order requires the amortization of deferred O&M expenses totaling $923 thousand over a period of three years with no return allowed during the deferral or amortization periods.
- Grid Improvement Costs (Adjustment #35). The Order requires the amortization of deferred depreciation, O&M and property tax expenses totaling $848 thousand over a period of five years without allowing any return during the deferral or amortization periods.

The Commission's ruling on DEP deferrals is arbitrary and capricious because it is inconsistent with prior rulings allowing DEP to establish the deferrals accounts. In Order No. 2014-138, Order No. 2016-36, Order No. 2016-490, Order No. 2018-553, and Order No. 2018-751 the Commission approved the establishment by DEP of the deferral accounts at issue in this proceeding. Several of these orders allowed DEP to accrue a weighted average cost of capital ("WACC") return on the deferred balance as has been the practice of the Commission in the past. Those orders also reserved questions of the prudency of the underlying costs for a subsequent

rate proceeding. No party contested the prudency of the deferred expenses and the Commission has not made any finding that the expenses were imprudent. In refusing to allow DEP to recover a WACC return on a substantial portion of the deferred balances, the Order is inconsistent with the Commission's prior rulings. The change in treatment is arbitrary and capricious and in violation of law. The Commission should reconsider its decision to refuse to allow the recovery of a return on the full amount of the deferred balances.

The Commission's ruling on DEP deferrals is arbitrary and capricious because it fails to recognize that the deferred accounts that it allowed DEP to establish in Order No. 2014-138, Order No. 2016-36, Order No. 2016-490, Order No. 2018-553, and Order No. 2018-751 represented money that DEP spent to provide service to its customers and which DEP was required to raise from debt and equity investors. Because debt and equity investors must be compensated for the time value of their money, DEP incurs substantial costs associated with the funds in the deferred accounts. By denying DEP any recovery on the deferred funds and requiring the funds be recovered over extended periods of time, the Order fails to allow DEP its constitutionally protected opportunity to recover its costs of providing service to the public. Moreover, there is no accounting guidance to support the treatment proposed by the ORS and adopted by the Commission of separating the deferred balances into two categories, deferred operating expenses and deferred capital costs. These financing costs (the return on the deferred costs) are real costs that the Company incurred and to disallow recovery of these costs during the deferral period or the amortization period would be to disallow prudently incurred costs.

The Commission also ignored the fact that the ORS' logic is misplaced and inconsistent because there are carrying costs on regulatory liabilities that the ORS is willing to accept when they benefit customers. Indeed, the Commission heard testimony that customers earn a return on

a number of costs that they "pre-pay the Company." *See* Tr. 432 (Company witness Bateman testified that the end-of-life nuclear reserve would serve as a reduction to rate base); Tr. 456-457 (the Company is proposing that customers earn a return on the EDIT balance which would not have existed if the Commission had not ordered that deferral.) As a further example, the treatment in the Order of the effect of the Tax Cuts and Jobs Act ("TCJA") is inconsistent with the treatment of deferred expenses, demonstrating that the Commission's rulings on deferrals are arbitrary and capricious. Income taxes are an operating expense like depreciation, O&M and property taxes. Deferred income taxes result from the timing difference between when the Company collects taxes in rates and actually pays the taxes. Because the funds are collected from customers before they are paid to the U.S. Treasury, a regulatory liability is created instead of a regulatory asset. The regulatory liability is used as an offset to rate base resulting in substantial savings to customers. If the logic of the position recommended by the ORS, and accepted by the Commission, for deferrals was applied to the impact of the TCJA, rates would significantly increase. The inconsistency of the treatment of deferrals and the TCJA regulatory liability is arbitrary and capricious and supports DEC's request for reconsideration of the Order.

C. Return on Equity.

The Commission's decision to set DEP's revenue requirements using a return on equity ("ROE") of 9.5% is arbitrary and capricious and should be reconsidered. The undisputed evidence establishes that 9.5% is well below authorized ROEs for the Company's peers in the Southeast with which the Company competes for equity capital. The higher ROEs awarded to the Company's peers reflects the risks attendant upon owning and operating vertically integrated utilities, including nuclear generation, and a 9.5% ROE simply does not adequately account for

those risks. Additionally, the following are errors and inconsistencies that demonstrate that the decision on ROE is arbitrary and capricious and should be reconsidered.

- The Order was issued just months after the Commission issued Order No. 2018-804 in consolidated Docket Nos. 2017-207-E, 2017-305-E and 2017-370-E. In that consolidated proceeding, the Commission was asked to make a determination of the cost of equity for SCE&G assuming that the merger of its parent SCANA and Dominion Energy was approved. SCE&G presented the testimony of Robert Hevert, the same witness called by DEP to testify about ROE issues in this proceeding. Not surprisingly, the testimony of Hevert was similar in the two cases. However, in the SCE&G proceeding the Commission made the following ruling on the ROE issue:

> In short, the Commission finds that there is ample evidence and reason to conclude that the analyses conducted by Mr. Hevert are accurate and reliable estimates of SCE&G's cost of equity. The Commission further finds that it is appropriate and reasonable to consider a range of estimates under various methodologies in order to more accurately estimate SCE&G's cost of equity. Accordingly, the Commission rejects Mr. Baudino's analysis as flawed and incomplete, concludes that the Company's current cost of equity most likely ranges between 10.25% and 11% as determined by Mr. Hevert, and that the most likely point estimate of the costs of equity is 10.75%, assuming the merger is approved.

  Order No. 2018-804 at pp. 89-90.

- The ROE ruling by the Commission in Order No. 2018-804 was one of the issues addressed in petitions for reconsideration filed by intervenors. In Order No. 2019-122, issued on February 12, 2019, the Commission rejected their arguments asking for reconsideration on the ROE issue:

> The decision to adopt Mr. Hevert's return on equity calculation is supported by the evidence and is neither capricious nor arbitrary. See *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n,* 270 S.C. 590, 598, 244 S.E.2d 278, 282 (1978) (finding that a return of equity is appropriate if supported

> by the evidence and neither capricious nor arbitrary). It supports a cost of equity of 10.75%.

Order No. 2019-122, at p. 27.

- ORS witness Parcell testified that the Commission should set a lower ROE for DEP because of the effect of what he termed "favorable regulatory mechanisms" including several deferral requests that DEP has pursued in this proceeding. Tr., Vol. 6, pp. 1178-18 - 1178-24. However, in the Order the Commission has rejected DEP's requests to use some of the very regulatory mechanisms that Parcell cited as a basis for his lower recommended ROE. There is no indication that the Order took into account that the Commission would refuse to allow DEP to use the very regulatory mechanisms that Parcell relied on for his opinion that a lower ROE was appropriate because DEP faced less risk.
- The Order characterizes Hevert's testimony in this proceeding as biased and not credible. However, in the consolidated SCE&G proceedings the Commission found Hevert's testimony - in which he offered the same opinions that he offered in this proceeding - to "provide accurate and reliable estimates" of SCE&G's cost of equity.

The ruling in this proceeding that DEP must set rates using an ROE of 9.5% cannot be reconciled with the Commission's rulings in the SCE&G consolidated cases. It is also based on a misreading of the testimony of DEP witness Hevert's testimony and gives substantial weight to the clearly erroneous testimony of ORS witness Parcell. The ROE set by the Commission for DEP is arbitrary, capricious and unlawful, and it prejudices substantial rights of the Company. The Commission should reconsider this issue.

D. Coal Ash Litigation Expenses (Adjustment #36).

Under well-established South Carolina law, "[a]lthough the burden of proof of the reasonableness of all costs incurred which enter into a rate increase request rests with the utility; the utility's expenses are presumed to be reasonable and incurred in good faith." *Hamm v. South Carolina Public Service Commission*, 309 S.C. 282, 266, 422 S.E.2d 110, 112 (1992). The record in this docket does not provide a basis for overcoming the presumption that the Company's coal ash litigation expenses were reasonable and incurred in good faith. DEP presented testimony and exhibits that showed that the coal ash litigation expenses it seeks to recover in rates do not relate to any criminal matter or to any matter in which it has been determined that DEP violated environmental laws. Instead, the testimony and exhibits, including late-filed Exhibit 56, showed that the coal ash litigation expenses relate to the normal and prudent operations of an enterprise like DEP.

A substantial portion of the litigation expenses relate to efforts by DEP to recover sums it has had to pay for coal ash related issues from more than twenty-five insurers that provided DEP with liability coverage during the time-period from 1971 to 1986. Any benefits derived from the insurance litigation will flow to the rate-payers who funded such litigation. It was prudent and reasonable for DEP to pursue coverage under these policies and it is appropriate that the expenses related to the litigation be included in rates. The Commission's decision not to allow recovery of these expenses is arbitrary and capricious. The Commission's decision to disallow these expenses should be reconsidered and reversed. Otherwise, if the litigation proves fruitful, then the proceeds of that litigation should be shared by those who paid for the litigation – shareholders and customers in North Carolina, not customers in South Carolina.

E. CertainTEED Litigation Costs.

The Commission's decision to disallow recovery of costs related to the CertainTEED litigation is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and is affected by an error of law. Supporting its decision that the Company not be permitted to recover its CertainTEED litigation costs, the Commission reasoned that the Company had produced no evidence to show that the alleged decision to breach the contract at issue and the resulting payment obligation was in the interest of customers. Order No. 2019-341 at 77. The Commission also found that the conclusions in the relevant order issued by the North Carolina Business Court, along with the Company's payment obligation of $90 million, "clearly raises concerns." *Id.* (citing *See Utils. Servs. of S.C.*, 392 S.C. at 109-110, 708 S.E.2d at 762-63). In referencing *Utils. Servs. of S.C.*, the Commission's Order hints that the order issued by the North Carolina Business Court raises a "specter of imprudence," thereby overcoming the presumption that the Company's expenses were reasonable and incurred in good faith. By this line of reasoning, however, the Commission erroneously focuses its analysis on a judicial proceeding that addressed exclusively *whether* the Company had breached a contract to supply gypsum, not on the prudency of the Company's actions throughout the entire timeline in question. This is a vital distinction in the analysis of whether the presumption of reasonableness due to the Company is overcome.

To overcome the presumption of reasonableness discussed in *Utils. Servs. of S.C.*, evidence must have been supplied by a party that calls into question the prudency of the Company's actions throughout the entire period relevant to contractual arrangement and the results that it obtained and not solely focused on what a trial court found a single step along that timeline. The evidence relied upon by the Commission—the North Carolina Business Court

order—has no bearing whatsoever on the prudency or lack of prudency of the actions that the Company took in dealing with litigation in question; the subsequent decision to appeal the lower court order, and the settlement that resulted after the Company filed its notice of appeal. Because no evidence was proffered to overcome the presumption of reasonableness to which the Company is entitled, the Commission's decision to deny cost recovery is erroneous.

Furthermore, the Commission's finding that customers did not benefit from the actions the Company took under the entirety of this arrangement is belied by the undisputed testimony given by Ms. Coppola where she demonstrated that customers benefitted from the CertainTEED contract on the order of $50 million, net of these litigation costs. Had the Company followed what the Commission and ORS appear to believe would have been the most prudent course of action and not defended itself in the CertainTEED litigation, customers would have paid more to CertainTEED and this $50 million net benefit would have been reduced. *See* Tr. Vol. 5-2, at 916 ("Under that agreement, DEP has to only pay the liquidated damages set under the 2012 contract, a sum much less than what [CertainTEED] claimed in the lawsuit."). Moreover, it would be fundamentally unfair for customers to benefit from the sale of gypsum and then be held harmless from litigation that results from such sales. Ultimately, the Company's decision to defend itself and to enter into the settlement was a strategic, reasonable, and prudent decision, and a decision that directly benefitted ratepayers, and no evidence to the contrary was proffered. For that reason, the Company is entitled to a presumption that its expenses were reasonable and incurred in good faith, and the Commission's decision to disallow recovery of these costs was erroneous.

CONCLUSION

The Commission should reconsider Order No. 2019-341 to address and remedy the unlawful rulings described in this petition. Pursuant to S.C. Code Ann. §58-27-2150, DEP requests that the Commission grant this petition, vacate order No. 2019-341 and issue a new order consistent with the arguments set out in this petition.

Dated this 31st day of May, 2019.

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